These are the tentative rulings for civil law and motion matters set for Tuesday, April 2, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Friday, March 29, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

---

1. M-CV-0057663 Accelerated Realty Group, Inc. vs. Rundus, Paul

Defendant's Demurrer to the Complaint is overruled. The complaint adequately states a valid cause of action against defendant. Defendant is directed to review and comply with the Placer County Superior Court Local Rules for all future motions. The failure to comply with local rule requirements in the future may result in sanctions being assessed against defendant and/or his counsel.

2. S-CV-0021731 Lauwers, Dianne vs. Siepert, Dustin

Plaintiff's Motion to Substitute Attorney is granted. John D. Montague of Montague & Viglione shall be substituted as counsel of record for plaintiff in this action. If oral argument is requested, plaintiff's request for telephonic appearance is granted. The court will contact counsel when the matter is called for hearing.

3. S-CV-0022239 Umpqua Bank vs. Diamond Creek Partners, LTD., et al

Cross-defendants Diamond Equities, Inc. and Stephen Des Jardins' ("cross-defendants'") request for judicial notice is granted. The court takes judicial notice of the existence of the identified documents, but not the truth of the matters stated therein. Cross-defendants' Motion to Compel Further Responses, and Production of Documents is granted in part and denied in part.

The primary basis for cross-complainants Scott C. Jacobs and Garrett W. Jacobs' (collectively "cross-complainants") opposition to the motion is the assertion that the motion is not being heard on or before the 15th day before the trial date. Code Civ. Proc. § 2024.020(a). Cross-complainants' assertion that the discovery motion deadline in this case is March 26, 2013 is incorrect. Based on the current trial date of April 15, 2013, the discovery motion deadline falls on March 31, 2013, which is a Sunday. As April 1st is a court holiday, the last day for discovery motions to be heard is April 2, 2013. Accordingly, the motion is timely.

Cross-complainants also argue that an agreement was reached between counsel that cross-complainants would not be obligated to produce responsive documents until after cross-defendants had completed their required production of documents. The court finds no clear agreement on this issue in the exhibits submitted by cross-complainants. Even if there was such an agreement at one time, it is clear that no such agreement was in effect by the time the subject discovery was served and responses made.

The party to whom a request for production of documents is directed must respond separately to each item in the demand by one of the following: (1) a statement that the party will comply by the date set for inspection with the particular demand for inspection, testing, etc.; (2) a statement that the party lacks the ability to comply with the particular demand; or (3) an objection to all or part of the demand. Code Civ. Proc. § 2031.210(a). To be effective, the objection must identify with particularity the specific document or evidence demanded as to which the objection is made, and set forth the specific ground for objection, including claims of privilege or work product protection. Code Civ. Proc. § 2031.240(b). Cross-complainants' objections to the subject discovery fail to identify with particularity the specific document or evidence demanded as to which the objections are made.

Although cross-complainants generally argue that the objections asserted in their responses to the subject discovery have merit, they provide no particularized support for the propriety of the objections as to each request. The burden is on the responding party to justify any objections. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255. Cross-complainants' request to submit an untimely response to separate statement to address their objections to the discovery is denied. There is no valid reason for cross-complainants' failure to timely submit a full and complete response to separate statement in connection with their opposition.

Based on the foregoing, the motion to compel is granted as to Request Nos. 1-11, 13-22, 24-31 and 42-45. The motion to compel is denied as to Request Nos. 12 and 32-41. These requests are substantively identical to previous requests already propounded on cross-complainants.

Cross-complainants shall serve verified amended responses to the subject discovery requests, without objections, and without the stated condition that production shall only be made after requesting parties have produced documents, by no later than April 9, 2013. Cross-complainants shall make available for inspection documents responsive to the subject discovery requests by no later than April 9, 2013.

Cross-defendants are awarded sanctions against cross-complainants in the amount of $2,500. Code Civ. Proc. § 2031.300(c).

Cross-defendants' request to continue trial is denied. Cross-defendants fail to establish diligent efforts to obtain essential testimony, documents, or other material evidence. Cal. R. Ct., rule 3.1332(c). There is no explanation for cross-defendants' decision to wait until just before the continued trial date to seek purportedly critical discovery. Cross-defendants also fail to establish a significant change in the status of the case.

4. S-CV-0027881 State Farm General Insurance Co. vs. Watts Water Tech., et al

Ruling on Motion for Summary Judgment Against State Farm General Insurance Company

State Farm General Insurance Company's ("State Farm's") request for judicial notice is granted. The court notes that State Farm purported to object to several of the facts in the separate statement of undisputed material facts. However, objections must be made in the proper format as set forth in California Rules of Court, rule 3.1354(b) and must be to evidence, not to facts. State Farm's purported objections set forth in the separate statement are overruled.

Defendant David Shawl dba Foresthill Plumbing Services dba Auburn Plumbing Company's ("Foresthill's") Motion for Summary Judgment Against State Farm is denied. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Code Civ. Proc. § 437c(c). In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. *Aguilar v. Atlantic Richfield Co. (*2001) 25 Cal.4th 826, 843.

It is undisputed that the complaint in this action was filed on September 2, 2010, which, as admitted by Foresthill, was prior to the first date the statute of limitations on State Farm's claim may have run. Thus the only question for purposes of Foresthill's motion is whether the Doe amendment naming Foresthill as a Doe defendant, filed July 16, 2012, could relate back to the filing of the original complaint. State Farm raises a triable issue of material fact regarding whether it was aware of facts rendering Foresthill liable at the time the original complaint was filed. Although State Farm had previously speculated that the supply line may have failed due to over-tightening, an expert report obtained by State Farm in January 2008 opined that the supply line failed as a result of a design defect, and did not conclude that improper installation had caused the failure. (Pltf. SSAF 5-8, 17-18.) Foresthill notes that the January 2008 report referred to "fresh tool marks" and "slight tool marks" and contends that such statements evidence State Farm's knowledge of facts rendering Foresthill liable. There still remains a triable question of material fact regarding whether the appearance of "fresh" and "slight" tool marks constituted sufficient facts to support the assertion of liability against Foresthill, especially given the expert's opinion at that time that the failure was purely the result of a design defect.

Ruling on Motion for Summary Judgment Against MTD

Foresthill's Motion for Summary Judgment against MTD (USA) Corporation ("MTD") is denied. Foresthill contends that a four-year statute of limitations pursuant to Code of Civil Procedure section 337.1 bars MTD's indemnity claim against Foresthill. Code of Civil Procedure section 337.1 applies to damage claims against contractors for damages relating to patent deficiencies in improvements to real property. Foresthill claims that the defect in this action involved a patent deficiency because once water began uncontrollably flowing from the upstairs toilet supply line through the house, the defect was clearly discoverable by reasonable inspection. The court disagrees that an otherwise latent defect automatically becomes patent

once damage becomes apparent. Further, whether a defect is latent or patent is a question of fact. *Winston Square Homeowner's Ass'n v. Centex West, Inc.* (1989) 213 Cal.App.3d 282, 290. Accordingly, the court cannot determine as a matter of law that Code of Civil Procedure section 337.1 applies to this action, and bars MTD's claim against Foresthill.

5. S-CV-0029207 Ruano, Chris vs. Sierra Joint Community College District

The motion of defendant and cross-complainant Sierra Joint Community College District for orders compelling plaintiff Chris Ruano's attendance and testimony at his deposition, to compel further responses to deposition questions and for sanctions is granted.

Code of Civil Procedure section 2025.480 authorizes motions for orders compelling answers to deposition questions if made within 60 days of the completion of the record of the deposition. The moving party must lodge with the court a certified transcript of the pertinent parts of the deposition no later than five days prior to the hearing. "If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition." (CCP 2025.480(i).) "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel an answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (CCP 2025.480(j).)

Plaintiff claims the answers defendant seeks invade the attorney-client and attorney work product privileges. The burden of establishing a privilege is on the party asserting it. (*San Diego Professional Association v. Superior Court* (1997) 54 Cal.App.4th 625, 639; *Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940.) To establish an attorney client privilege the party asserting the privilege must show there was a communication, that the communication was intended to be confidential, and that the communication was made in the course of an attorney-client relationship. (*Sullivan v. Superior Court* (1972) 29 Cal.App.3d 64, 69.) To establish an attorney work product privilege the party asserting it must show the work is "the product of [the attorney's] effort, research, and thought in the preparation of his client's case…all as reflected in interviews, statements, memoranda, *correspondence*, briefs, and any other writings reflecting the attorney's 'impressions, conclusions, opinions, or legal research or theories…." (*BP Alaska Exploration, Inc. v. Superior Court* (1988) 199 Cal.App.3d 1240, 1253-1254, fn 4.)

The questions, on their face, do not appear to involve either privilege, and plaintiff has failed to carry his burden to show that the privileges do apply. The only colorable argument plaintiff makes is that the act of transmitting evidence between attorney and client is privileged. (See, e.g., plaintiff's opposition at pp. 2-3.) The cases plaintiff cites for that proposition are *State Farm Fire and Casualty Co. v. Superior Court* (1997) 54 Cal.App.4th 625, 639, and *People v. Lee* (1970) 3 Cal.App.3d 514, 526. (*Ibid.*) *State Farm* involved an effort to obtain deposition answers from a former State Farm employee who had worked in its litigation unit and who, on behalf of State Farm, had consulted with outside counsel in connection with a bad faith claim against her employer. In that context the court stated as follows:

> "We have no doubt that Ms. Zuniga was an "authorized representative" of State Farm…for application of the privilege. 'It is no less the client's communication to the attorney when it is given by the client to an agent for transmission to the attorney, and it is immaterial whether the agent is the agent of the attorney, the client, or both.' However, the attorney-client privilege only protects disclosure of *communications* between the attorney and the client; it does not protect disclosure of underlying facts which may be referenced within a qualifying communication.
>
> "Therefore, to the extent that Ms. Zuniga has knowledge about the practices and procedures of State Farm, or the existence of claims manuals and other documents which are normally utilized by State Farm in the operation of its business, the information is not privileged. Also, it would not be a violation of the attorney-client privilege for Ms. Zuniga to divulge that such documents exist but were not produced in connection with the Taylor Action, *although to divulge a conversation to that effect or the fact that such information had been delivered to an attorney, would violate the privilege.* (*People v. Lee* (1970) 3 Cal.App.3d 514, 526 ['... the fact that the client delivered ... evidence to his attorney may be privileged, the physical object [or information] itself does not become privileged merely by reason of its transmission to the attorney.']." (*Id*., at p. 640; second emphasis added.)

The *State Farm* facts are unlike those in this case. This case involves transmission of a document. Defendant does not seek disclosure of a "conversation," and plaintiff has not shown that particular information was transmitted from attorney to client.

The language plaintiff relies on in *Lee* is this: "Although…the fact that the client delivered such evidence to his attorney may be privileged, the physical object itself does not become privileged merely by reason of its transmission to the attorney." (*People v. Lee, supra,* 3 Cal.App.3d 514, 526.) However, *Lee* was a criminal case in which the defendant delivered criminal evidence to his attorney. In this case the attorney delivered a document to plaintiff, and plaintiff fails to show that the document is "evidence." Finally, the *Lee* comment relies on a decision in an out of state case. (*Ibid.*)

Any failure on defendant's part to lodge the deposition transcript with the court within five days of the hearing is excused. Plaintiff has not disputed the accuracy of the defendants' representations of the deposition questions and answers and of the discussions between counsel. Plaintiff also claims defendant did not comply with the meet and confer requirements of CCP 2025.450(2) and 2016.040. He argues counsel made no effort to resolve the matter informally before filing the motion. In *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016-1017 the court concluded the trial court did not abuse its discretion when it found that plaintiff's counsel made adequate efforts to meet and confer with defendant's counsel prior to bringing the motion to compel that gave rise to the imposition of sanctions. Although counsel did not engage in the normal post-discovery meet and confer activities (e.g., sending a proper letter to opposing counsel), a number of other factors appearing in the record supported the finding of good faith efforts under the circumstances. The objections were made during a deposition, so counsel had an opportunity to discuss the matter face-to-face at the time the dispute arose.

Further, the issue was relatively simple, and there was need for immediate action because there was an upcoming trial date and cutoff dates for discovery and discovery motions. Scheduling a face-to-face meeting or telephonic conference was also complicated by the fact that defendant's counsel had announced two lengthy periods prior to trial in which he would not be available. Further, in his letter to plaintiff's counsel, defendant's counsel did not suggest a date or time at which he would be available and did not indicate any intention to compromise. (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016-1017.)

The court determined that the level of effort at informal resolution which satisfies the reasonable and good faith attempt standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler or more narrowly focused case, a more modest effort may suffice. The history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, the prospects for success, and other similar factors can be relevant. Judges have broad powers and responsibility to determine what measure and procedures are appropriate in varying circumstances. A trial judge's perceptions on such matters, inherently factual in nature at least in part, must not be lightly disturbed. (*Id*., at p. 1016.) (*Cf. Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1439 ["A reasonable and good faith attempt at informal resolution entails something more than bickering with deponent's counsel at a deposition. Rather, the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate. This was not done at the Townsend deposition"].)

The facts in this case are much closer to those in *Stewart.* The transcript shows defense counsel made repeated, "fact to face" efforts to discuss the issues and explain why the objections lacked merit, but plaintiff's counsel rebuffed all of them and told defense counsel to "move along." It was clear then that a subsequent and more formal meet and confer effort would have been futile. Further, this is not a complex case. The issues could have been resolved at the deposition. Finally, at the time of the deposition at the end of January 2013, trial was scheduled for July 28, 2013, and there was some urgency in resolving the matter as quickly as possible. Defendants filed this motion on February 14 for hearing this date, less than 90 days before the discovery cut-off. In short, there is "something more [here] than bickering with deponent's counsel at a deposition." (*Townsend v. Superior Court, supra,* 61 Cal.App.4th at p. 1439.)

Sanctions are appropriate where an attorney unsuccessfully makes or opposes a motion to compel an answer…unless [the court] finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (CCP 2025.480(j).) The sanctions requested are reasonable in amount. The court therefore awards sanctions as prayed in the amount of $5,632.40.

6. S-CV-0030677 Macy's West Stores, Inc., et al vs. Roseville Shoppingtown

The Motion to Compel is dropped. No moving papers were filed.

7. S-CV-0031885 Bechhold, Jerry R. vs. Bank of America

The Demurrer to the First Amended Complaint was dropped.

Defendant's Motion for Sanctions Against Plaintiff Jerry R. Bechhold is denied. Plaintiff's first amended complaint alleges in part claims purportedly arising after the prior action was dismissed with prejudice. The filing of the first amended complaint does not conclusively support a finding that it was filed for an improper purpose.

If oral argument is requested, Bank of America's request for telephonic appearance is granted. The court will contact counsel when the matter is called for hearing.

8. S-CV-0032279 AAA No. Cal., Nev., Utah Insurance vs. Placer Co. Water Age

The Demurrer to the Complaint was dropped.

9. S-CV-0032307 Umpqua Bank vs. Miller, Scott A., et al

Appearance required. Plaintiff is advised that the notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(B). Plaintiff's request for judicial notice is granted. Plaintiff's Motion to Strike the Answer of Defendant Frank A. Miller is granted with leave to amend. As a verified complaint has been filed, a verified answer is required. Code Civ. Proc. § 446(a). A general denial is not sufficient to controvert a verified complaint. Code Civ. Proc. § 431.30(d). The affirmative defenses stated in the answer must be separately stated. Code Civ. Proc. § 431.30(g). Defendant Frank A. Miller shall file and serve any amended answer to the complaint by no later than April 23, 2013.

10. S-CV-0032447 Westwood Montserrat, Ltd. vs. AGK Sierra de Montserrat

Defendant's request for judicial notice is granted as to Exhibits A-D and F-G. The request for judicial notice is denied as to Exhibit E. It is proper for the trial court to take judicial notice of dates, parties, and legally operative language of recorded documents. *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 265. Defendant's Demurrer to the Complaint is sustained as to each cause of action, with leave to amend.

Each cause of action asserted in the complaint assumes the validity of, and arises out of the Supplemental Declaration recorded on October 28, 2009. The Construction Deed of Trust at issue in this action was recorded in January 2006. When Comerica Bank foreclosed on the Construction Deed of Trust, the subsequently filed Supplemental Declaration was extinguished. *See Homestead Savs. v. Darmiento* (1991) 230 Cal.App.3d 424, 436; *Sain v. Silvestre* (1978) 78 Cal.App.3d 461, 471 (disapproved on other grounds in *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124.) Although plaintiff alleges that the CC&Rs gave plaintiff the right to record documents setting forth the Declarant's right to enforce construction deadlines for lots in the subject development, there is no indication that the CC&Rs permitted the Declarant to expand its right to enforce construction deadlines by granting itself repurchase rights. In any event, plaintiff provides no argument to support the contention that the Supplemental Declaration somehow retained priority over the previously recorded Construction Deed of Trust, and was not extinguished when Comerica Bank foreclosed on the Construction Deed of Trust. Given that each cause of action is predicated on the validity and enforceability of the Construction Deed of Trust, each cause of action fails as a matter of law.

Plaintiff must file and serve any amended complaint by no later than April 23, 2013.

11. S-CV-0032557 Va'a, Brianna Ariana, et al - In Re the Petition of

The Petition for Compromise of Minor's Claim was continued to June 25, 2013 at 8:30 a.m. in Department 40.

12. S-CV-0032619 Verdera Community Ass'n vs. JPMorgan Chase Bank, NA

Appearance required on April 2, 2013 at 8:30 a.m. in Department 40.

These are the tentative rulings for civil law and motion matters set for Tuesday, April 2, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Friday, March 29, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.